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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: **DE MEUTER et al.**

Group Art Unit: 1761

Confirmation No.: 6581

Examiner: Leslie Wong

Application No.: 09/586,964

Filed: June 5, 2000

Attorney Docket No. 7393/71920

Customer No. 42798

Title: **SUGAR-FREE HARD COATINGS PREPARED FROM LIQUID MIXTURES OF ERYTHRITOL AND SORBITOL**

April 29, 2005

**APPEAL BRIEF**

**MAIL STOP APPEAL BRIEF-PATENTS**

U.S. Patent and Trademark Office

Commissioner for Patents

Customer Service Window

Randolph Building

401 Dulany Street

Alexandria, VA 22314

Dear Sir:

In response to the Advisory Office of March 29, 2005, please enter and consider the following Appeal Brief.

**REAL PARTY IN INTEREST**

The real party in interest in the present application is Cerestar Holding B. V. , as evidenced by the Assignment recorded on June 5, 2000, at Reel 010850, Frame 0135, in the U.S. Patent and Trademark Office. Cerestar Holding B.V. is owned by Cargill, Incorporated.

**RELATED APPEALS AND INTERFERENCES**

There are no known other appeals or interferences which might directly affect or be directly affected by or have a bearing on the Board's decision in the pending Appeal.

**STATUS OF CLAIMS**

For purposes of this Appeal, the status of the claims in the application is as follows:

Claims 1, 6, 7, 9, 10, 14, 16, 19, 21, 22, and 24 stand rejected.

Claims 1, 6, 7, 9, 10, 14, 16, 19, 21, 22, and 24 are on appeal.

**STATUS OF AMENDMENTS**

The Amendment After Final filed March 1, 2005, has been entered by the Examiner.

**SUMMARY OF THE CLAIMED SUBJECT MATTER**

The present invention is directed to, in one embodiment, sugar-free hard-coated comestibles consisting of a hard coating and an edible, chewable and/or pharmaceutical core. At least one layer of the hard coating is obtained from a liquid mixture of sorbitol and erythritol, which forms a homogeneous layer that is in direct contact with the core to effect adhesion to the core. The dry substance of the liquid mixture comprises 60% w/w sorbitol and 40% w/w erythritol.

This embodiment is presented in the Specification such as on page 5, lines 7-11, page 6, lines 19-21, and FIG. 3, as examples. In FIG. 3, the homogeneity of the layer of the hard coating is illustrated.

**GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

**A. Issue**

1. Whether claims 1, 6, 7, 9, 10, 14, 16, 19, 21, 22, and 24 define non-obvious inventions, under 35 U.S.C. §103(a) over Rosenplenter (EP Patent No. 0813817).

**B. Grouping of Claims**

Claims 1, 6, 7, 9, 10, 14, 16, 19, 21, 22, and 24 stand together as one group.

**ARGUMENT**

(i) Rejections under 35 U.S.C. §112, first paragraph - Not relevant to the present Appeal.

(ii) Rejections under 35 U.S.C. §112, second paragraph - Not relevant to the present Appeal.

(iii) Rejections Under 35 U.S.C. §102 - Not relevant to the present Appeal.

(iv) Claims 1, 6, 7, 9, 10, 14, 16, 19, 21, 22, and 24 stand rejected under 35 U.S.C. §103(a) as obvious over the Rosenplenter reference (EP Patent No. 0 813 817 A2). The rejection over Rosenplenter is in error, and the rejected claims 1, 6, 7, 9, 10, 14, 16, 19, 21, 22, and 24 are non-obvious under 35 U.S.C. §103(a) for at least the following reasons.

There is no teaching or suggestion in Rosenplenter of, at least, the presently claimed “liquid mixture of sorbitol and erythritol...forming a homogeneous layer.”

Rosenplenter does not suggest a sugar-free hard-coated comestible consisting of a hard coating and an edible, chewable and/or pharmaceutical core with at least one layer of the hard coating obtained by applying a liquid mixture of sorbitol and erythritol to a core. Rosenplenter does not suggest a liquid mixture of sorbitol and erythritol, or that such a

liquid mixture of sorbitol and erythritol would form a homogeneous layer of the hard coating.

The hard coating of Rosenplenter is heterogeneous and has large erythritol crystals randomly dispersed in a sorbitol matrix. These characteristics are undeniably shown in the Declaration of record (filed October 4, 2002) and in a Comparative Example in the specification at pages 10-11.

Furthermore, the scope of both the Declaration of record and the data presented in Table 2, Trial 1, and Figure 3 of the specification are clearly commensurate with the scope of the pending claims, and are illustrative of the patentable distinction between comestibles produced by the method according to Rosenplenter and the presently claimed comestibles.

Rosenplenter does refer to applying sorbitol only syrup to cores (column 3, lines 1 *et seq.*), and separately, physically applying solid crystalline materials on the sorbitol coated cores. The sorbitol forms a thin film on the surface of the cores and after the cores are moistened by the sorbitol, a small portion of crystalline xylitol, Isomalt, maltitol or erythritol is brought on the surface of the thin film of sorbitol that 'moistened' the cores (column 3, lines 13- 35). This is entirely consistent with the Example at column 4, lines 27-30 (sorbitol applied and separately crystalline erythritol applied on top of the sorbitol layer). This reference does not suggest or describe the liquid mixture of sorbitol and erythritol, or the homogeneous layer as recited in claim 1.

Rosenplenter does not suggest a sugar-free hard-coated comestible consisting of a hard coating, wherein at least one layer of the coating is obtained from a liquid mixture, which comprises a mixture of sorbitol and erythritol and which, on a dry substance basis, comprises 60% w/w sorbitol and 40% w/w erythritol. Nor does Rosenplenter suggest or describe that the layer formed by the mixture is homogeneous.

Fees

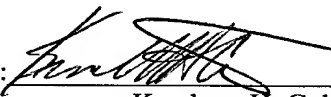
If any fee is required to ensure entry of this Appeal Brief is missing or the fee tendered is deficient, then such missing or deficient fee can be charged to our deposit account 06-1135 regarding order number 7393/71920.

Conclusion

Appellants earnestly, but respectfully, solicit favorable consideration by the Board of Appeals and reversal of the sole rejection.

Respectfully submitted,

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**APPENDIX**

This appendix contains a clean copy of the claims involved in the appeal.

Claim 1. Sugar-free hard-coated comestibles consisting of a hard coating and an edible, chewable and/or pharmaceutical core characterized in that at least one layer of the hard coating is obtained from a liquid mixture of sorbitol and erythritol wherein the dry substance of the mixture comprises 60% w/w sorbitol and 40% w/w erythritol, said layer being in direct contact with said core to effect adhesion to said core; and said mixture forming a homogeneous layer.

Claims 2-5 (canceled).

Claim 6. Sugar-free hard-coated comestibles according to claim 1, wherein the core is selected from the group consisting of pharmaceutical tablets, chewing gum, confectionery product, chocolate and nut.

Claim 7. Sugar-free hard-coated according to claim 1, wherein said hard coating has a smooth, regular surface.

Claim 8 (canceled).

Claim 9. Sugar-free hard-coated comestibles according to claim 1, wherein said sugar-free hard-coated comestible has a pharmaceutical core.

Claim 10. Sugar-free hard-coated comestibles according to claim 1, wherein said hard coating comprises at least one of binding agent, dispersing agent, film former, coloring agent or flavoring agent.

Claims 11-13 (canceled).

Claim 14. Sugar-free hard-coated comestibles according to claim 1, wherein the hard coating consists of from 1 to 100 layers at least one of which comprises said mixture.

Claim 15 (canceled).

Claim 16. Sugar-free hard-coated comestibles according to claim 10, wherein the hard coating consists of from 1 to 100 layers at least one of which comprises said mixture.

Claims 17 and 18 (canceled).

Claim 19. A sugar-free hard-coated comestible according to claim 1, wherein said at least one layer is a first formed on said core, and additional layers in said hard coating are formed from a member selected from the group consisting of said liquid mixture and single polyols.

Claim 20 (canceled).

Claim 21. A sugar-free hard-coated comestible according to claim 1, wherein said hard coating is formed from a syrup.

Claim 22. A sugar-free hard-coated comestible according to claim 1, wherein said hard coating is formed from a liquid mixture.

Claim 23 (canceled).

Claim 24. A sugar-free hard-coated comestible according to claim 1, wherein said syrup or said liquid mixture contains at least one ingredient selected from the group consisting of artificial sweeteners, dispersing agents, coloring agents, film formers, binding agents and flavoring agents.

Claims 25-38 (canceled).